

**CALIFORNIA COASTAL COMMISSION**

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Filed:	April 13, 2000
49 <sup>th</sup> Day:	June 1, 2000
180 <sup>th</sup> Day:	October 10, 2000
Staff:	ALK/LB
Staff Report:	July 20, 2000
Hearing Date:	August 8-11, 2000
Commission Action:	

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-00-111

**APPLICANTS:** Joe & Carol Ballard; Bryan & Danielle Ballard

**AGENT:** Frank Montesinos

**PROJECT LOCATION:** 108 Capistrano Lane, San Clemente, Orange County

**PROJECT DESCRIPTION:** Construction of a new 3781 square foot, 32' high (23' 6" above centerline of frontage road), split level duplex ranging from two to four stories in height with two attached 2-car garages on a vacant, sloping lot.

**PROJECT SPECIFICS:**

Lot Area:	3200 sq. ft.
Building Area:	4825 sq. ft.
Building Coverage:	1361 sq. ft.
Pavement Coverage:	1028 sq. ft.
Landscape Coverage:	811 sq. ft.
Parking Spaces:	Four (4)
Land Use Designation:	Residential High Density
Avg. Max. Ht.:	32 feet
Ht. above Frontage Rd.:	23 feet 6 inches

**SUMMARY OF STAFF RECOMMENDATION:**

The applicant proposes to construct a 32' high duplex on a vacant lot in the Pier Bowl district of the City of San Clemente. Staff recommends that the Commission **APPROVE** the proposed development subject to two (2) special conditions. Special Condition No. 1 requires the applicant to submit revised plans which show the height of the structure not to exceed a maximum average height of 32' (23' 6" above the centerline of Capistrano Lane). Special Condition No. 2 requires the recordation of a future improvement deed restriction.

The major issue of this staff report is preservation of public coastal views. As proposed, the project is 3' 6" higher than the adjacent structure, but is consistent with the height of development in the surrounding area. As such, the project will not result in a significant adverse effect on the existing public coastal view. This is an after-the-fact permit, as construction was initiated without benefit of a coastal development permit.

**STAFF NOTE:** *The subject application was originally heard at the June 2000 Commission hearing, but was continued so that the applicant and staff could work together to resolve outstanding issues regarding the height of the proposed structure.*

**LOCAL APPROVALS RECEIVED:**

Approval-in-Concept from the Department of Community Development of the City of San Clemente; Approval of Cultural Heritage Permit 99-13 from the Planning Commission of the City of San Clemente; City of San Clemente Geotechnical Review dated June 24, 1999 and City of San Clemente Building Permits.

**SUBSTANTIVE FILE DOCUMENTS:**

City of San Clemente Certified Land Use Plan, City of San Clemente Pier Bowl Specific Plan and Coastal Development Permits P-2-28-77-312 (Schroeder), P-5-13-77-920 (Ratkelis), P-7-11-77-1324 (Easton), P-7-28-77-1482 (Glover), P-12-2-77-2353 (Hartfield); and P-80-7017 (Rampart Research and Financial).

**LIST OF EXHIBITS:**

1. Vicinity Map
2. Assessor's Parcel Map
3. Pier Bowl Boundary Map
- 4a. Revised Project Plans
- 4b. Original Project Plans
5. City of San Clemente Planning Division Memorandum dated March 27, 2000
6. Location of Previously-Issued CDPs in Pier Bowl District
7. Copies of Previously-Issued CDPs in Pier Bowl District
8. Objection Letters Received Since June 2000 Hearing
9. View Corridor Figure from Pier Bowl Specific Plan
10. Site Photos

**STAFF RECOMMENDATION:**

The staff recommends that the Commission **APPROVE** the permit with special conditions.

**MOTION:**

**I move that the Commission approve Coastal Development Permit No. 5-00-111 pursuant to the staff recommendation.**

Staff recommends a **YES** vote. Passage of this motion will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION:**

**I. APPROVAL WITH CONDITIONS**

The Commission hereby **GRANTS** a permit, subject to the conditions below, for the proposed development on the grounds that the development, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 including the public access and recreation policies of Chapter 3, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

## II. **STANDARD CONDITIONS**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## III. **SPECIAL CONDITIONS**

1. Final Project Plans
  - A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, two (2) full sets of final project plans approved in concept by the City of San Clemente which are consistent with the tentative revised project plans submitted July 7, 2000. The plans shall demonstrate that the structure approved by Coastal Development Permit No. 5-00-111 does not exceed a maximum average height of 32' 0", or 23' 6" above the centerline of Capistrano Lane.
  - B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
2. Future Development Deed Restriction
  - A. By acceptance of this permit, the applicant hereby acknowledges that the height of the structure approved by Coastal Development Permit 5-00-111 for development at 108 Capistrano Lane in the City of San Clemente shall not exceed a maximum height of 32 feet above average finished grade.
  - B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on

development within the parcel. The deed restriction shall include legal descriptions of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

#### **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

##### **A. Project Location, Description and Background**

###### Project Location

The subject site is located at 108 Capistrano Lane in the Pier Bowl area of the City of San Clemente (Exhibits 1 & 2). The subject site is a "through lot" which abuts both Capistrano Lane to the northeast (inland) and Santa Ana Lane to the southwest (seaward). The site is located within the Residential High (RH) density zoning designation, approximately one-quarter mile from the shoreline. The nearest public coastal access is provided at the entrance to the San Clemente Municipal Pier, directly southwest of the subject site.

The Pier Bowl is a mixed-use district adjacent to the Municipal Pier, which serves as the central focal point of the City (Exhibit 3). The area includes commercial, visitor-serving and residential development. As described in the Pier Bowl Specific Plan, the topography of the subject area gently slopes seaward, forming a "*natural amphitheater to the ocean.*"

###### Project Description

The applicant is proposing the construction of a new 3781 square foot, 32' high (average max. height above finished grade) split-level duplex ranging from two to four stories in height with two attached 2-car garages on a vacant, sloping lot (Exhibit 4a). One garage will take access from Capistrano Lane, while the other garage will take access from Santa Ana Lane. The project also involves approximately 900 cubic yards of cut for site preparation. Excess material will be disposed of at the Prima Deshecha Landfill.

###### City Approval of Project

On April 20, 1999, the City of San Clemente Planning Commission approved Cultural Heritage Permit 99-13 for construction of the originally proposed 43' 4" high duplex. The Cultural Heritage Permit was necessary due to the proximity of the subject site to a designated historic site. The City's staff report for the Cultural Heritage Permit included a condition requiring Coastal Commission approval prior to issuance of a building permit. However, no coastal development permit (CDP) application was submitted to the Commission. Instead, the City's Planning Division staff cleared a building permit through an improperly issued Categorical Exclusion approval.

As allowed under Categorical Exclusion Order E-82-1 (City of San Clemente), certain categories of development located in specific geographic areas can be excluded from the requirement of obtaining a coastal development permit if specific conditions are met. However, the subject site is not located within an area encompassed by the Categorical Exclusion Order. In addition, even if the site had been located within a Categorical Exclusion area identified on the map, the proposed duplex did not meet the Categorical Exclusion condition limiting project height to a maximum of 25 feet above average finished grade. Therefore, the City's approval was issued in error. Attached is a memo dated March 27, 2000, summarizing the City's internal investigation into the approval of the project (Exhibit 5).

Prior Commission Action on the Current Application

On June 14, 2000, the Coastal Commission heard the applicant's proposal for a 43'4" high (55' 6" above the centerline of Capistrano Lane), 3-5 story structure at the subject site. Commission staff presented the proposed project recommending denial based on height, followed by testimony from the applicant's agents, the City of San Clemente Community Development Director, and a number of private citizens. Prior to making a decision on the proposed project, the Commission granted the applicant's request that the item be continued pending further project design negotiations with Commission staff. Since that time, the applicant and architect have met with staff and submitted revised project elevations. The new elevation drawings show the top floor removed from the design, resulting in an approximately 11' reduction in overall project height. The applicant is now proposing a 32' high (average max. height above finished grade), 2-4 story structure, which is 23' 6" above the centerline of Capistrano Lane, as shown in Exhibit 4a. The previously proposed plans are shown in Exhibit 4b.

Prior Commission Actions in Subject Area

The majority of existing development within the subject area appears to be pre-coastal (constructed prior to the passage of the Coastal Act). However, Commission staff has identified six (6) Commission approvals determined to be applicable to the currently proposed project. These were residential developments either conditioned to maintain a specific height limit or were proposed at the height specified below. Exhibit 6 graphically depicts the location of each prior Commission action.

1. On April 4, 1977, the Coastal Commission approved P-2-28-77-312 (Schroeder) for the construction of a four-story duplex, conditioned not to exceed **20' from the centerline of the frontage road (Capistrano Lane)** at 110 Capistrano Lane (Exhibit 7a). The Schroeder residence is located directly south of the subject site.
2. On August 11, 1977, the Commission approved CDP No. P-5-13-77-920 (Ratkelis) for the construction of a 3-level duplex with four-car subterranean level garage, conditioned not to exceed **30' 6" above the centerline of Santa Ana Lane** at 117 Capistrano Lane (Exhibit 7b). This structure is located three lots south of the subject site.
3. On August 11, 1977, the Commission approved CDP No. P-7-11-77-1324 (Easton), which allowed the construction of a four-story duplex, conditioned not to exceed **36' above the centerline of Alameda** and **23' 6" above the centerline of Santa Ana Lane** at 122 Santa Ana Lane (Exhibit 7c). This structure is located one block west and seven lots south of the subject site, at the intersection of Santa Ana Lane, Monterey Lane and S. Alameda Lane.
4. On August 25, 1977, the Commissions approved CDP No. P-7-28-77-1482 (Glover) for the construction of a three-story, four-unit apartment building with subterranean garage for eight cars, proposed at **28' 4" above the centerline of the frontage road** at 511 Avenida Del Mar (Exhibit 7d). This structure is located two lots north of the subject site, at the intersection of Avenida Del Mar, Capistrano Lane and Santa Ana Lane.
5. On January 9, 1978, the Commission approved CDP No. P-12-2-77-2353 (Hartfield), which allowed the construction of a 3-story (over garage level) triplex, conditioned not to exceed **26' above average finished grade** and **36' above the centerline** of the frontage road at 123 Coronado Lane (Exhibit 7e). This structure is located two blocks west and seven lots south of the subject site, at the intersection of Monterey Lane, S. Alameda Lane and Coronado Lane.
6. On August 11, 1980, the Commission approved Coastal Development Permit P-80-7017 (Rampart Research and Financial) for the demolition of a single-family dwelling and construction of a new three-story, five-unit condominium proposed at **25' above average**

**finished grade and 32' above the centerline of the frontage road** at 103 Coronado Lane (Exhibit 7f). This structure is located two blocks west and three lots north of the subject site, at the intersection of Avenida Del Mar, S. Alameda Lane and Coronado Lane.

Written Public Comment

Twenty-five (25) letters of opposition to the proposed project have been received since the mail-out for the June 14, 2000 hearing in Santa Barbara (Exhibit 8). The opponents express concern over the height of the proposed structure as it relates to view obstruction and community character. Many have requested the height of the proposed duplex be restricted to 20' above the centerline of Capistrano Lane.

**B. Standard of Review**

The Commission certified the City of San Clemente Land Use Plan (LUP) on May 11, 1988, and approved an amendment in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan (IP) portion of the Local Coastal Program (LCP). The suggested modifications expired on October 10, 1998. Therefore, the City has no certified LCP and the Commission retains permit issuance jurisdiction.

The City has recently submitted the revised IP for Commission review. However, until such time as the IP is approved and the City's LCP has been fully certified by the Commission, the Chapter Three policies of the Coastal Act are applied as the standard of review. The City's certified LUP will be used as guidance in the current analysis.

Also noted, the City adopted the Pier Bowl Specific Plan on October 13, 1993. The Specific Plan is included in the City's recent IP submittal for Commission review. However, as the Commission has yet to certify the Specific Plan, the Plan will not be applied as guidance.

**C. Scenic and Visual Resources**

**1. Coastal Act Policy**

Section 30251 of the Coastal Act states, in pertinent part:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

**2. City of San Clemente Land Use Plan Policies**

Section 305 of the City's certified LUP contains the following Coastal Visual and Historic Resources Goals and Policies.

Policy XII.5 states:

*Preserve the aesthetic resources of the City, including coastal bluffs, visually significant ridgelines, and coastal canyons, and significant public views.*

Policy XII.9 states:

*Promote the preservation of significant public view corridors to the ocean.*

### **3. Pier Bowl Specific Plan Policies**

The Pier Bowl Specific Plan contains policies and standards for allowable building height and view preservation within the Pier Bowl district. During public workshops for the development of the Specific Plan, the protection of significant public views was identified as an important design issue. Included in the Specific Plan is an identification of significant view corridors, including the Pier and ocean from Avenida Del Mar. Exhibit 9 illustrates four of the six designated view corridors in the Specific Plan. However, as the Commission has yet to certify the City's Specific Plan, these policies will not be used as guidance in the current analysis.

### **4. Analysis of Scenic and Visual Resource Issues**

The applicant is proposing to construct a new 32' high, 2-4 story duplex on a vacant, in-fill lot. The project is sited in an area where development is allowed to reach to a maximum average building height of 45' above existing grade. (Averages are used to measure building height on sloping lots.) However, at present, the structures within the surrounding residential neighborhood do not typically exceed a 35-foot average maximum height above existing grade. The majority of developments on similar "through lots" within the subject area maintain a consistent building height of no more than four stories on the downward sloping side and two stories on the upward sloping side, with heights not exceeding 35' above average finished grade.

The current pattern of development has created a fairly uniform line of structures along each parallel block within the Pier Bowl area. As shown in Exhibit 10a, each row of residences steps down with the topography toward the ocean. A few older residences maintain a lower building height, but the majority of newer structures along Capistrano Lane, Santa Ana Lane and S. Alameda Lane are at least two stories tall. Since the area is almost entirely built out, the majority of coastal views are achieved by looking over or around these existing structures when traveling down Avenida Del Mar, a public roadway leading to the ocean.

Development at the currently vacant lot will obstruct a portion of the existing public view of the shoreline and the Municipal Pier from Avenida Del Mar. However, the construction of a 2-4 story split level structure at the site is consistent with existing development and cannot be prohibited entirely. Nonetheless, to maintain consistency with the current pattern of development, the height of the new development can be conditioned to be in conformance with the height of surrounding development. If limited to a height not to exceed 32' from average finished grade, the proposed structure will not contrast greatly with the neighboring structures or result in significant additional view blockage.

Staff has evaluated the following three (3) project alternatives regarding the proposed structure height: 1) allow the structure to be built with a pitched roof at 32' average maximum height and 23' 6" above the centerline of Capistrano Lane, 2) require the structure to be constructed with a flat roof at 22' 2" above Capistrano Lane, or 3) require the structure to be constructed at 20' above the centerline of Capistrano Lane.

#### Alternative 1

As proposed, the structure would be constructed at 32' above average finished grade, or 23' 6" above the centerline of the frontage road, Capistrano Lane. The plane (i.e. plate line) of the structure would be located at approximately 21' 6" above the centerline of the frontage road (Capistrano Lane) and the pitched tile roof features would extend to a maximum height of 23' 6," as shown in Exhibit 4a. This alternative would allow the applicant to construct a duplex approximately

3' 6" taller than the adjacent flat roof structure at 110 Capistrano Lane and approximately 4' taller than the adjacent flat roof structure at 106 Capistrano Lane. However, due to the slope of Capistrano Lane, the proposed structure at 108 Capistrano Lane would appear approximately the same height as the Schroeder residence, which sits at a slightly higher elevation. The existing structure at 106 Capistrano Lane appears to have been built at less than 20' from the centerline of the road (no records available) and sits at a slightly lower elevation than the subject lot. As such, the proposed structure would appear as much as 4' taller than the structure at 106 Capistrano Lane.

While the proposed duplex would be slightly higher than the structures on either side of it, the additional view blockage would be minimal. As viewed from Avenida Del Mar, the proposed structure would be visually consistent with the existing pattern of development in the surrounding neighborhood (Exhibit 10b). The duplex would be two stories high on the Capistrano Lane side of the structure and four stories high on the Santa Ana Lane side. The peak of the tile roof features shown on the project plans (Exhibit 4a) would be the only portions of the proposed structure (with exception of the chimney and roof equipment) to reach a maximum height of 23' 6" above the frontage road. The remainder of the structural facade would be constructed with a primarily flat roof design at a height of approximately 22' 6". As such, the proposed duplex would not result in substantial visual impact and would appear consistent with existing structures in the surrounding area.

It should be noted that any development at the subject lot would preclude some portion of the existing ocean view. So long as the new structure is in substantial conformance with the heights of the surrounding structures, adverse effects to the existing public view and character of the area will be lessened. Additionally, the pitched tile roof of the proposed structure is consistent with the design intent of the City of San Clemente LUP, which encourages Spanish Colonial architecture in the Pier Bowl.

#### Alternative 2

The flat roof alternative would reduce the height of the proposed structure to 22' 2", a minimal difference from the proposed structure height at 23' 6". The flat roof alternative includes an 8" parapet wall above the 21' 6" plane for adequate roof runoff. While this alternative would reduce the building height, the architectural design will be compromised and the additional public view benefit would be minimal.

#### Alternative 3

The third alternative would limit the allowable building height to 20' above the centerline of Capistrano Lane. As such, the structure would be exactly the same height as the Schroeder residence next door. View blockage of the ocean as seen from Avenida Del Mar would be reduced by approximately 3' 6" along the northern length of the structure as compared to Alternative 1, and by 2' 2" compared to Alternative 2. As previously stated, this improved public view would not be significant.

#### Recommended Alternative

The Commission finds Alternative 1 to be allowable based on the pattern of existing development within the Pier Bowl area, the resultant public view effect of the proposed project, and past Commission actions in the area. The average maximum height of the proposed development is 32' above average finished grade, consistent with the 35' and 36' standards applied in other Commission approvals within the Pier Bowl and with current building heights existent in the neighborhood. As discussed in Section II.A, there are structures within the Pier Bowl that are taller than 20' above their respective frontage roads, but remain within the 35' average maximum height limitation. As such, the newly proposed 23' 6" high duplex will be consistent with the heights of nearby structures and consistent with past Commission actions in the subject area.



As discussed previously, the Commission has imposed building height restrictions on four of the six known developments that were issued coastal development permits within the subject area. Commission actions include the approval of a duplex at 110 Capistrano Lane, next door to the subject site, which was limited to 20' above the centerline of the frontage road [CDP No. P-2-28-77-312 (Schroeder)]. Other approvals include a 3-level, 30' 6" high (above centerline of the frontage road) duplex at 117 Capistrano Lane [P-5-13-77-920 (Ratkelis)], a 36' high (avg. maximum height) duplex at 122 Santa Ana Lane [CDP No. P-7-11-77-1324 (Easton)], a 3-story, 28' 4" high (above the centerline of the frontage road) four-unit apartment building at 511 Avenida Del Mar, and a 36' high (avg. maximum height) duplex at 123 Coronado Lane [CDP No. P-12-2-77-2353 (Hartfield)]. Of the cases evaluated, only one structure was limited to a maximum height of 20' above the centerline of the frontage road. All others were allowed to construct 2, 3 and 4 story structures extending to a maximum height of 36' above average finished grade. Consequently, the proposed duplex exceeds the height of the adjacent structure, but is consistent with other developments approved in the neighboring blocks (Exhibit 10c).

The Commission recognizes that the adjacent structure (110 Capistrano Lane) was limited to a height of 20' above the centerline of the frontage road; however, in this case, the structure will be allowed to extend to 23' 6" above the centerline. The adjacent structure was built with a flat roof, while the proposed structure will have a pitched tile roof. The plane of the proposed building will be located at 21' 6," and the pitch of the roof will extend 2' above that. The resultant visual impact of the proposed pitched roof structure as compared to a flat roof structure is negligible.

As discussed previously, the ocean is visible when traveling toward the San Clemente Pier via Avenida Del Mar. Avenida Del Mar is the main entrance road into the Pier Bowl. The Commission recognizes this horizon view of the ocean to be a visual resource of statewide significance. The proposed project will be conditioned not to exceed an average maximum height of 32', or 23' 6" above the frontage road, Capistrano Lane. The plane of the proposed structure will exist at 21' 6," and the peak of the pitched tile roof features will reach a maximum height of 23' 6.' As such, the preponderance of the existing public view within the Avenida Del Mar view corridor will be maintained. In addition, the project will have no affect on existing views toward the Pier Bowl Core as seen from the San Clemente Municipal Pier. The duplex, as conditioned below, will be consistent with the height and character of the adjacent structures as viewed from both Avenida Del Mar and the Municipal Pier.

## **5. Special Conditions**

Special Condition No. 1 requires the applicant to submit two (2) full sets of project plans, approved by the City of San Clemente, showing that the proposed structure not exceed a maximum average height of 35' above existing grade and 23' 6" above the centerline of the frontage road (Capistrano Lane). The Commission also imposes Special Condition No. 2, which requires the applicant to record a deed restriction which notifies the applicant and any future landowners that the structure approved by CDP 5-00-111 shall not exceed a maximum average height of 32' above existing grade.

## **6. Conclusion**

The project will result in minimal obstruction of the public view of the ocean from Avenida Del Mar, as would virtually any development at the subject site. Nonetheless, the proposed duplex conforms to the existing pattern of development and with past Commission actions in the subject area. The proposed 32' high (avg. max. height) structure is allowable, as it is consistent with similar 2-4 story residential structures in the surrounding area. Based on records research and field visits, Commission staff has confirmed that the majority of existing structures in the surrounding area have been constructed at comparable heights. In addition, the Commission has set a precedent of limiting height in the subject area to no more than 36' average maximum height.

As such, the Commission's current action is consistent with prior actions in the Pier Bowl district. . Therefore, the Commission finds the proposed duplex, as conditioned, to be consistent with Section 30251 of the Coastal Act.

## **D. New Development**

### **1. Coastal Act Policies**

As defined by Section 30106 of the Coastal Act, "development" includes a change in the density or intensity of use of land or construction, reconstruction, demolition, or alteration of the size of any structure. The proposed project involves construction of a new duplex on a vacant lot.

Section 30250 (a) of the Coastal Act requires that new development be located where it will not have significant adverse affects on coastal resources. It states, in relevant part:

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.*

As stated previously, Section 30251 of the Coastal Act requires the scenic and visual qualities of coastal areas to be considered and protected as a resource of public importance. Therefore, new development should be sited so as not to adversely affect scenic and visual resources.

### **2. City of San Clemente Land Use Plan Policies**

Section III. G of the City of San Clemente Certified Land Use Plan (LUP) contains various policies regarding new residential development within the Pier Bowl district. These policies are being used as guidance.

LUP Policy I.5 addresses multi-family residential development as follows:

*Require that multi family residential projects be designed to convey a high level of quality and distinctive neighborhood character in accordance with the Urban Design Element.*

The LUP includes the following policy intent for the Pier Bowl area:

*Plan policy provides for the continuation of the Pier Bowl as a recreational activity area. Coastal recreational uses including retail, restaurant, hotel, bed and breakfast, time share, and residential are allowed. Cultural and recreational activities, including the Ocean Festival, are encouraged. Building design in the Pier Bowl is required to preserve public views, encourage pedestrian activity, to be sensitive to the Pier Bowl's topography and to be a Spanish Colonial Revival Architecture style.*

The LUP also contains Policy VI.5 requiring the preparation of a Specific Plan to guide new development in the Pier Bowl:

*Formulate a Specific Plan incorporating detailed land uses, design and public improvement requirements to ensure consistent development of the Pier Bowl area.*

### **3. Pier Bowl Specific Plan Policies**

The Pier Bowl Specific Plan provides policies, development standards and design guidelines for new development in the subject area. Of particular interest as it relates to the currently proposed development, the Specific Plan requires the design of buildings to be compatible with the surrounding area, particularly adjacent buildings and suggests that in-fill development not contrast greatly with the neighboring structure. However, as noted previously, the Pier Bowl Specific Plan has not been reviewed and certified by the Commission and therefore, is not being applied in the current analysis.

### **4. Analysis of Development Issues**

The applicant is proposing a new 32' high duplex in the Pier Bowl area of San Clemente. The project is consistent with the 45' height limit set forth in the City of San Clemente Zoning Ordinance for structures within the Residential High (RH) density district. In addition, the project is consistent with the City's LUP (used as guidance in the current evaluation) which requires the design of buildings to be "sensitive to the Pier Bowl's topography and to be a Spanish Colonial Revival Architecture style."

Existing development in the subject area steps down with the topography towards the ocean. Building heights vary from structure to structure, but do not typically exceed a maximum height of 35'. The proposed structure will be slightly taller than the immediately adjacent structures by approximately 3'-4', but will be consistent with the height of similar residential development in the surrounding area. In addition, the 32' high duplex is designed to be consistent with the pattern of existing development, which includes two to four story structures on sloping "through lots." As proposed, the duplex will follow the established pattern of development. Consequently, the proposed project will maintain the existing character of the Pier Bowl district.

As discussed previously, the proposed structure will not substantially decrease the existing public view of the ocean from Avenida Del Mar. The area is almost entirely built out, and the majority of views are achieved by looking over or around existing structures. Nearby structures have been constructed at similar heights as that proposed by the current application. Therefore, the proposed project will not contrast greatly with the neighboring structures or result in significant additional view blockage. While development at this in-fill lot will obstruct a portion of an existing public view, the Commission cannot preclude all development at this site. The Commission, can, however, limit the height of the structure to be comparable to the existing development in the subject area. As such, the Commission imposes Special Conditions 1 and 2, discussed in Section C.

### **5. Conclusion**

The Commission finds that the proposed development is consistent with existing development in the subject area and will not result in a significant adverse effect on the existing public view. The Commission has previously imposed building height restrictions in the subject area, thereby setting a development precedent, as reviewed on page 5 of the current report. Existing structures along Capistrano Lane and Santa Ana Lane are a maximum average height of 35 feet above grade. The proposed 32' high structure will exceed the height of immediately adjacent structures, but will be consistent with the 35' maximum height limit set by the Commission in prior actions in the Pier Bowl area. For the reasons discussed above, the Commission finds that the proposed development, as conditioned, is consistent with Sections 30250 and 30251 of the Coastal Act.

**E. Unpermitted Development**

Without benefit of a coastal development permit, the applicant has initiated construction of the duplex. Site preparation (i.e. grading and foundation placement) and structural framing has occurred.

Commission action on this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

**F. Local Coastal Program**

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program (LCP) which conforms with Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan (LUP) for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan (IP) portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. Therefore, the Commission retains coastal development permit jurisdiction in the City of San Clemente.

The City has recently submitted the revised IP for Commission review. The Pier Bowl Specific Plan is included in the City's submittal. The Specific Plan includes policies that are intended to be consistent with the Chapter Three policies of the Coastal Act. However, the Commission finds the Specific Plan policies to be internally inconsistent in their regulation of building height and view preservation. Resolution of this issue will be necessary during the Commission's review of the current Implementation Plan submittal. Consistency with the scenic and visual resource policies of the Coastal Act must be ensured prior to LCP certification.

While the IP is still under consideration, the Commission can not take any action that may prejudice the City's ability to prepare a certified LCP. However, as proposed at 32' high, the structure is consistent with the visual resource policies of the Coastal Act. In addition, the proposed development is consistent with the policies contained in the City's certified Land Use Plan regarding preservation of public views of the coastline. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

**G. Consistency with the California Environmental Quality Act (CEQA)**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the scenic and visual resources and new development policies of the Coastal Act. Mitigation measures, in the form of special conditions, require 1) submittal of revised project plans; and 2); recordation of a deed restriction limiting allowable building height, will minimize all adverse effects. As conditioned,

there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.